

## **EXHIBIT 9**

**Kenefick, Matthew**

**From:** Maria Pum [mpum@hcesq.com]  
**Sent:** Tuesday, July 15, 2008 6:34 PM  
**To:** Kenefick, Matthew  
**Cc:** Kristen Caverly; Gebhardt, Robert C.  
**Subject:** RE: Familiy whole

Matt--

We already agreed to move the date for the hearing once, which is why it is now pending for August 20. We don't see the need to agree to your proposed continuance because your motion may well prove to be moot if the judge rules in our favor on our summary judgment motion. If you are committed to bringing a motion seeking to leave to dismiss the cross-complaint, we would agree to having the matter heard on August 20--assuming the court's schedule would accommodate having both hearings on that date. That way the motion for summary judgment could be ruled upon and if the ruling on the motion for summary judgment does not dispose of the case, you could then argue your motion for leave to dismiss the cross-complaint without prejudice.

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**From:** Kenefick, Matthew [mailto:MSK@JMBM.com]  
**Sent:** Tuesday, July 15, 2008 3:52 PM  
**To:** Maria Pum  
**Cc:** Kristen Caverly; Gebhardt, Robert C.  
**Subject:** RE: Familiy whole

Will you then stipulate to continuing the hearing on the Motion for Summary Judgment to allow the Court sufficient time to decide Familiy whole Inc.'s motion for an order authorizing Familiy whole Inc. to dismiss its Cross-Complaint from the first action without prejudice?

thank you,  
-Matt

Matthew Kenefick for  
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**EXHIBIT 9**

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From: Maria Pum [<mailto:mpum@hcesq.com>]

Sent: Tuesday, July 15, 2008 3:41 PM

To: Kenefick, Matthew

Cc: Kristen Caverly

Subject: Familiy whole

Matt:

I got the message you left yesterday requesting that we agree to allow Familiy whole to dismiss the counterclaim and cross-complaint without prejudice. We do not agree to such a dismissal, if it is without prejudice.

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